

HONORABLE RONALD B. LEIGHTON

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

BEAN ENVIRONMENTAL L.L.C., a  
Delaware limited liability company,

Plaintiff,

v.

GENERAL METALS OF TACOMA, INC.;  
ARKEMA, INC, formerly known as  
ATOFINA CHEMICALS, INC.,

Defendants.

Case No. C05-5307 RBL

ORDER ON MOTION  
TO DISMISS

THIS MATTER comes on before the above-entitled Court upon Defendants' Motion to Dismiss.

Having considered the entirety of the records and file herein, and having considered that *General Metals of Tacoma, Inc., et al. v. Bean Environmental L.L.C., et al.*, C05-5306(RJB)RBL was recently transferred to this Court, the Court rules as follows:

This is a breach of contract case involving the cleanup of the Hylebos waterway. Defendants, General Metals and Arkema (collectively the Head of Hylebos Cleanup Group, or "HHCG") contracted with Bean Environmental L.L.C. and Bean Dredging L.L.C. (collectively "Bean") to perform the dredging of the Hylebos. As often happens, a dispute arose over the performance of, and payments on, the contract. Bean invoked the mediation clause of the contract, and on May 3, 2005 the parties unsuccessfully mediated the issues. On that same afternoon, HHCG filed suit in this court alleging that Bean had breached the contract by failing to adequately and timely dredge the waterway. That case was given Cause No. C05-5306 RJB and assigned to

1 the Honorable Robert J. Bryan. The next day, May 4, 2005, Bean filed the instant action which alleges that  
2 HHCG failed to pay Bean monies due and owing under the contract.

3 Defendants in this case, HHCG, have moved to dismiss Beans' complaint on the grounds that the two  
4 lawsuits cover the same operative set of facts, and under the "first to file rule" this matter should be dismissed  
5 and *General Metals of Tacoma, Inc., et al. v. Bean Environmental L.L.C.*, C05-5306 (RJB)RBL should  
6 survive. *See e.g., Alltrade, Inc. v. Uniweld Products, Inc.*, 946 F.2d 622 (9<sup>th</sup> Cir. 1991). Bean counters that  
7 the "first to file rule" should not apply because HHCG's lawsuit is akin to a declaratory judgment action and  
8 that it was filed in anticipation of Beans' complaint. *Id.* at 628.

9 Contrary, however, to Beans' arguments, HHCG's claims are for money damages and thus are not  
10 declaratory in nature, and HHCG had placed Bean on notice of performance issues prior to withholding  
11 payments. Therefore, it is hereby

12 **ORDERED** that Defendants' Motion to **DISMISS** [Dkt. #2] is **GRANTED**.

13 The Clerk shall send uncertified copies of this order to all counsel of record, and to any party appearing  
14 pro se.

15 Dated this 26<sup>th</sup> day of July, 2005.

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18 RONALD B. LEIGHTON  
19 UNITED STATES DISTRICT JUDGE  
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